

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D20566
O/prt

_____AD3d_____

Argued - September 12, 2008

PETER B. SKELOS, J.P.
JOSEPH COVELLO
RUTH C. BALKIN
THOMAS A. DICKERSON, JJ.

2007-06403

DECISION & ORDER

Louis Cappella, appellant, v Suresky
at Hatfield Lane, LLC, respondent.

(Index No. 3224/05)

Finkelstein & Partners, LLP, Newburgh, N.Y. (Kara L. Campbell of counsel), for appellant.

Ryan & Smallacombe, LLP, Albany, N.Y. (John Moore of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Orange County (Owen, J.), dated June 5, 2007, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff, an employee of R. I. Suresky & Son, Inc., a car dealership located in Orange County, allegedly fell in the dealership lot and sustained injuries. The lot is owned by the defendant, Suresky at Hatfield Lane, LLC, a limited liability corporation. Harold E. Suresky is the owner of the defendant and, along with his wife and son, is a board member of the Suresky car dealership.

The defense afforded to employers by the exclusivity provisions of the Workers' Compensation Law may also extend to suits brought against an entity which is found to be the alter ego of the corporation which employs the plaintiff (*see Hageman v B & G Bldg. Servs., LLC*, 33 AD3d 860; *Ortega v Noxxen Realty Corp.*, 26 AD3d 361; *Thompson v Bernard G. Janowitz Constr. Corp.*, 301 AD2d 588). A defendant moving for summary judgment based on the exclusivity defense

October 7, 2008

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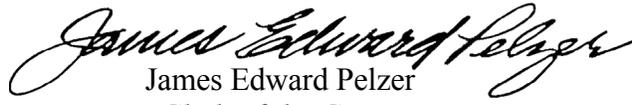
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of the Workers' Compensation Law must show, prima facie, that it was the alter ego of the plaintiff's employer (*see Ortega v Noxxen Realty Corp.*, 26 AD3d 361, 362).

Here, the defendant met its burden in moving for summary judgment by proffering evidence that R. I. Suresky & Son, Inc., exercised managerial and financial control over the defendant sufficient to establish a prima facie defense under the Workers' Compensation Law (*see Hageman v. B & G Bldg. Servs. LLC.*, 33 AD3d 860; *Ortega v Noxxen Realty Corp.*, 26 AD3d 361; *Thompson v Bernard J. Janowitz Constr. Corp.*, 301 AD2d 588). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Young Man Song v CSA Contr. Corp.*, 287 AD2d 560).

SKELOS, J.P., COVELLO, BALKIN and DICKERSON, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court